

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB STORY**, on January 17, 2001 at 8:00 A.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Bob Story, Chairman (R)
Rep. Ron Erickson, Vice Chairman (D)
Rep. Roger Somerville, Vice Chairman (R)
Rep. Joan Andersen (R)
Rep. Joe Balyeat (R)
Rep. Gary Branae (D)
Rep. Eileen Carney (D)
Rep. Larry Cyr (D)
Rep. Rick Dale (R)
Rep. Ronald Devlin (R)
Rep. John Esp (R)
Rep. Gary Forrester (D)
Rep. Daniel Fuchs (R)
Rep. Verdell Jackson (R)
Rep. Jesse Laslovich (D)
Rep. Trudi Schmidt (D)
Rep. Butch Waddill (R)
Rep. Karl Waitschies (R)

Members Excused: Rep. Keith Bales (R)
Rep. David Wanzonried (D)

Members Absent: None.

Staff Present: Jeff Martin, Legislative Branch
Rhonda Van Meter, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 58, 1/12/2001; HB 205,
1/12/2001

Executive Action: None

HEARING ON HB 58

Sponsor: REPRESENTATIVE RON ERICKSON, HD 64, Missoula

Proponents: Verner Bertelsen, Governor's Tobacco Use
Prevention Council
Dorothea Bertelsen
Mary Anne Guggenheim
Kristin Page Nei, American Cancer Society
Steve Yeakel, MCMCH
Linda Lee, Montana Campaign for Tobacco Free Kids
Dr. Robert Shepard, Governor's Advisory Council
Dick Paulsen, American Lung Association
Cliff Christian, American Heart Association
Jani McCall, Deaconess Billings Clinic
Mary McCue, Montana Dental Association
Elizabeth Andrews
Joan Miles, Lewis & Clark Health Department
Sami Butler, Montana Nurses Association
G. Andrews
Lea Taddonio

Opponents: Mark Staples, Montana Wholesale Retailers
Brenda Brewer
Jerome Anderson, R.J. Reynolds Tobacco Company
Mike Fellows, Montana Libertarian Party
Steve Wade, Phillip Morris
Mary Whittinghill, Montana Taxpayers Association

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 3.8}

REP. ERICKSON said this bill doubles the tax on cigarettes and tobacco products and also says how this money should be distributed. About 93% of the revenue will go to the Tobacco Trust. We should pass this bill because tobacco use causes pain, death, and great cost. He is presenting the bill because he is concerned about the health of Montanans. When the trust fund issue was taken to the ballot, he was asked to write the argument against it. One argument is that once a trust fund is put into the Constitution using funds that could end any year, a problem is created. We should not clutter the Constitution. There needs to be a steady source of revenue for the trust to help with health care and tobacco prevention for the long term. Another reason is that in the early years of the trust, not much principle is built up, not much interest comes out, and not much help goes to prevention and health care. So putting some money

in earlier will start getting more money from interest. This is also a good idea, because it is well known that if tobacco costs rise, smoking decreases and health care costs will go down.

EXHIBIT (tah13a01) This is a handout showing how other states handle tobacco taxes. There are 47 other states with tobacco taxes higher than Montana, and we are not going out of line when we suggest this relatively modest increase. The fiscal note shows there is a possible net loss to the long-range building program of \$36,000. He is open to any changes the committee suggests. He entered into the record a letter from Ellen Leahy, Director, Missoula City-County Health Department, and read the three reasons she supports this bill from her written testimony.

Proponents' Testimony:

Kristin Page Nei, Montana Advocacy Manager, American Cancer Society, read her written testimony. **EXHIBIT (tah13a02)**

Mary Anne Guggenheim said she supports this bill because of health issues and thinks it is good tax policy. This is a modest proposal compared to other states and suggests looking at Section 2, Item 2. Veteran's have a higher incidence of smoking than the general population because of experiences of war time, so she suggests rather than keeping this revenue neutral the legislature should allow them to benefit from this increase.

Linda Lee, Montana Campaign for Tobacco Free Kids, said their focus is kids and tobacco use. She would like the committee to think about the age someone starts using tobacco. Teenagers start smoking creating a lifelong habit when they are not even supposed to have tobacco. She then read from a summary of her testimony. **EXHIBIT (tah13a03)** She also handed out a Tobacco Taxation Fact Sheet that compares the tobacco taxes of the United States to other countries, and the U.S. is the lowest.

EXHIBIT (tah13a04) She pointed out a visual aide that shows the most preventable cause of death in the U.S. Montana puts a lot toward preventing deaths from alcohol, drug abuse, and car accidents, but four people per day die in Montana from tobacco related illness and resources are not being used to prevent these deaths. This is costing a lot of money and lives.

Dr. Robert Shepard, Chairman, Governor's Advisory Council for Tobacco Use Prevention, said he has done a lot of research regarding increasing tobacco taxes. Tobacco tax increases are effective in reducing cigarette smoking. These increases are more important for kids because they do not have the income that adults do. The advisory council was asked by Governor Racicot to create a comprehensive tobacco program to deal with the prevention of the use of tobacco and to help people quit using

tobacco. They have looked at other states who have developed these programs, and others have been successful, such as California, Florida, Massachusetts, and Oregon. From these states they have found doing a single isolated program, such as going to schools and teaching about tobacco, would not be effective. A good tobacco use prevention program needs to be a comprehensive program that uses every modality, including education, advertising, tobacco taxes, school programs, and cessation programs. The council came up with a recommendation that the tax be increased on cigarettes in Montana.

Dick Paulsen, American Lung Association, said the number of children who smoke is comparable to the number of adults. The only this trend will stop is to take this out of reach of the children and reduce the number who get started smoking. The increased tax is an effective way of keeping cigarettes out of the hands of children. The goal is that no child should have access to tobacco products, and this is one way to start.

Cliff Christian, American Heart Association, handed out his written testimony and pointed out the chart included. It compares other states to Montana. States that have increased their tobacco tax have decreased consumption and revenues have increased. **EXHIBIT (tah13a05)** He described his personal situation regarding health care from his past cigarette use and said he wished he had the knowledge of what this could do to someone when he was young.

Verner Bertelson, Governor's Tobacco Use Prevention Council, said the 25 people on the council were not influenced by anyone in making their decision to recommend adding taxes to tobacco products, which would cut down on use of tobacco. He would like the money to go to the Tobacco Trust and the interest used for health care purposes.

Jani McCall, Deaconess Billings Clinic, said they are committed to tobacco use prevention in Montana, and this will add to a foundation that has already begun.

Mary McCue, Executive Director, Montana Dental Association, said dentists are frequently the first health care providers that detect the effects of oral cancers. They believe increasing the tax will decrease tobacco use, particularly among young people.

Elizabeth Andrews said as parents they ask young children and teens to say no to drugs, alcohol, tobacco, and negative peer pressure. Young people need role models in order to learn responsible behavior. She would like the legislature to reduce tobacco consumption by increasing taxes on cigarettes. Studies

show that higher cigarette prices will result in lower cigarette consumption in youth. Consumption could also be reduced by allocating a portion of the cigarette tax revenue to the Tobacco Use Prevention Program, as this is a comprehensive long-term program set up to prevent tobacco use in adults and youth. Funding a program that supports community education, school programs, and other projects will not only reduce consumption but will demonstrate to youth that the leaders of this state strongly support tobacco use prevention.

Joan Miles, Lewis & Clark Health Department, admitted as an exhibit a letter from Ellen Leahy, Director of the Missoula City-County Health Department. **EXHIBIT (tah13a06)** Montana is one of the lowest states regarding tobacco tax rates, and there should be a fair tax system that taxes at a level which benefits the state.

Sami Butler, Executive Director, Montana Nurses Association, said she has seen the direct effects of long-term use of tobacco products. This bill supports prevention.

Opponents' Testimony:

Mark Staples, Attorney, Montana Wholesale Distributors, said tobacco is a legal product and the use is there because there is a consumer demand. The public has not adopted a policy to make this product illegal. Proponents said there is no black market, but in Canada they attempted to tax tobacco as an illegal product, but there was no public will to criminalize. A violent black market materialized, and they had to pull back from this policy. It has been stated Montana has a low tobacco tax, but there is an extraordinarily high property tax, income tax, and gas tax on the same people. The increases in tobacco prices were made to pay for the tobacco settlement worth billions of dollars, which funds groups who say they want more taxes on this product. The funded programs carried out by the retailers, which is called We Card, have been very effective in prevention. Advertising should not have to be pulled from all retailers just because kids go into these retailers. The tobacco companies are diversifying out of the tobacco business, but 20-25% of Montanans choose to smoke, and they are not going to be criminalized out of that behavior because prohibition does not work and black markets come up. This will only teach the kids that something some people freely choose but the majority opposes should be taxed.

Brenda Brewer said it has been said there is not a black market, but cigarettes can be bought off of the Internet, and people will do it freely if they are over taxed. The tobacco tax in Montana is low but there is also a very low income. The tobacco tax

settlement came about because the states said smokers were draining the funds of states, so this settlement money should be used only for cessation programs, youth prevention, and health care of smokers only. After this settlement, the tobacco companies increased the price of cigarettes. By adding this tax, you are double hitting smokers, which is unfair. By adding a tax, this does not decrease smoking, as they will do without every day necessities before giving up tobacco.

Jerome Anderson, Anderson-Baker Law Firm, R.J. Reynolds Tobacco Company, said the people who have chosen to use tobacco products should not be compared to heroin users. The tobacco tax was originally designed to give money to veterans, but now it goes to the long-range building program and the general fund. This is basically a sales tax. This tax already has responsibilities as far as its use is concerned, and if the revenue stream is taken away, you have to replace it. Every time a tax increase on cigarettes have been made, the sales markedly dropped, and the revenue has never been returned. This information is more detailed in his handout, and he read most of this written testimony. **EXHIBIT (tah13a07)**

Mike Fellows, Chairman, Montana Libertarian Party, read his written testimony. **EXHIBIT (tah13a08)**

Steve Wade, Phillip Morris, said this is not good public policy for taxation. Before you can understand how tobacco tax impacts nationwide when Montana is compared with other states, a more in-depth study would have to be done of the entire tax structure of every other state to get a more accurate reflection of the percentage on tobacco tax. The industry is very concerned about a black market and have asked the legislature in the past to pass a bill to address this. If this market does occur, Montana loses that revenue.

Mary Whittinghill, Montana Taxpayers Association, said they do not think using selective sales taxes to modify behavior is good public policy. Even though there is not a sales tax, Montana relies more heavily on selective sales tax than any other state. Nationwide selective sales taxes represent about 9.5% of the total taxes. In Montana, it is 14.5%. Selective sales taxes tend to be the most regressive tax of all. Poor families pay six times higher on a selective sales tax basis than the wealthy. In Montana, 1.8% of income is paid in with selective sales taxes, and nationwide it is 1.5% of income. The comparison to other states with regard to the tobacco tax is not appropriate, as the whole package needs to be looked at. Increasing taxes will produce alternative activities and will probably not be the result this bill is looking for.

Informational Testimony:

Hal Manson, American Legion of Montana, said currently the two veterans nursing homes in Montana are supported by the cigarette tax. They have a concern that when the amount of tax changes, the percentage of the tax allotted to the two nursing homes will change. They cannot afford to lose any money with regard to the care of the veterans in these nursing homes. They request that the allocation to these nursing homes remains the same.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 10.7}

REP. BALYEAT said he has a concern of increasing government reliance on sin taxes and believes an interest group is being created which is dependant on an increase in taxes. He asked if the same amount of tax money could be generated by encouraging people to smoke twice as many cigarettes. **REP. ERICKSON** said it could but might not be wise. **REP. BALYEAT** asked that if the point is to significantly reduce smoking, how will it be proposed to keep funding the programs that have been created once their source of funding has been eliminated. **REP. ERICKSON** replied people will continue to smoke because it is addictive and any bill going forward will not stop that, but they do wish to decrease it. There are fewer smokers than there used to be, and it would be wonderful if that number continues to go down. **REP. BALYEAT** asked if one of the programs was to significantly reduce smoking and this reduces their source of funding, then how will these organizations be funded after this source is gone. **REP. ERICKSON** said the long-range building program and veterans nursing homes are funded from this. Both of these are essential programs for the state, and he wants these to be at least held equal or possibly increase funding for the nursing homes. In the long-run, Montana does have needs, including long-range building and nursing homes, and if in the future everyone stops smoking, we will need to help these people out and this is the responsibility of state government. He predicts the proponents of this bill would be glad to be out of a job in the future because tobacco smoking no longer has to be prevented. **REP. BALYEAT** said the testimony was mostly about increasing the price to decrease smoking, but the bill provides funding for various government programs. He asked if it would be acceptable if the bill was amended and the entire proceeds from the increased tax were to go toward a refundable income tax credit to offset a portion of Montana's health insurance costs. **REP. ERICKSON** said this is a tobacco tax for the Tobacco Trust, and the Tobacco Trust has more to it than tobacco prevention. It must over time help with health care. He wants the Tobacco Trust to grow and be

able to use the interest for health care for Montanans. The language of the Tobacco Trust does not say health care has to be used for only tobacco related illnesses.

REP. JACKSON asked for a statement regarding taxing behavior and an opinion on making smoking illegal. **Mike Fellows** said he would not want to make smoking illegal. They oppose tax increases because taxes are a form of theft. Behaviors do not need to be controlled by sin taxes. It has been said by the Chairman of the American Cancer Society that persuasion would rather be used than the force of law to achieve these goals.

REP. WADDILL asked if the \$153 million the state pays annually for direct and indirect tobacco disease related medical costs could be broken down. **Kristin Page Nei** said ambulatory \$30,940,000; hospital \$49,640,000; nursing homes \$42,600,000; drugs \$8,480,000; and other \$22,310,000. **REP. JACKSON** asked if these are costs the entire state is paying. **Kristin Page Nei** said they estimate that to be \$170 per person in Montana. **REP. WADDILL** asked that since this tax is a small amount of what the state pays for tobacco related costs, how was the increased amount in tax determined. **REP. ERICKSON** said he was familiar with the tax of surrounding states. Doubling the tax was just a chosen number and can be changed by the committee.

REP. CARNEY asked who is going to pay for the health care of the 25% of relatively poor Montanans who smoke if this tax is not raised. **Mark Staples** said most smokers are low income, but not all smokers are low income and not all uninsured. Smoking related deaths are also not always direct smokers. There are significant costs regarding tobacco use, but the yearly burden of expenses are more than covered. The increase with this bill addresses how we are going to deal with all uninsured people and not just uninsured smokers. Tobacco is one of the few products that is heavily taxed. The question of the uninsured is much larger and not the problem of the consumers of tobacco.

REP. FUCHS asked where the parents' role was in this. **Cliff Christians** responded he hopes the parents' role is a strong one. What is proposed is a portion of the money being used for prevention and education, and the parents need this information to appropriately talk to their children about smoking.

REP. SOMERVILLE discussed amendments he would propose for Section 2 regarding the distribution of the money. It should state in the bill that the funds going to the general fund should only go toward health care costs and not education. **REP. ERICKSON** said when he chose the numbers in the bill, he wanted to make sure a great deal of money went into the trust fund and the nursing

homes and long-range building plan would be about equal. The idea of giving more money to the veterans' homes is a good one, but he wants to be sure there is not a cutback on money now going into the general fund, so he put in a number that would allow a small increase in general fund. He would be willing to work with the numbers so the general fund did not take a hit or have an increase, but he opposes the idea of cutting more money out of the general fund.

CHAIRMAN STORY asked if it is known what the price increase in cigarettes resulting from the settlement has done to consumption figures. **Jerome Anderson** replied that consumption has remained relatively stable in the last 12 months. **CHAIRMAN STORY** asked if it was his understanding there might be a consumption drop for awhile and then it will tend to come back so there is not a whole lot of change in demand as a result of price. **Jerome Anderson** said as you increase the price and tax of cigarettes this has generally shown a decline over the years. Seattle, Portland, and San Francisco governments admit over 20% of the sales in these areas are Chinese cigarettes brought in without any tax paid on them. These cigarettes have higher nicotine levels, and you are encouraging the use of these riskier products by increasing the tax. **CHAIRMAN STORY** asked if it has been seen that sales have dropped off on the higher priced product and been replaced with sales of discount brands. **Jerome Anderson** said that because lower income people tend to look for a lower priced product if possible, most all of the companies manufacture generic brands. These brands are taxed at the same rate. There has always been a mix of products at different prices. **CHAIRMAN STORY** said he believes there was a clause in the settlement agreement that stated if through the process of companies raising their prices to pay for the settlement as opposed to those who were not involved in the settlement and did not have to raise their prices the market shares change substantially, the states were required to manipulate the tax system. He asked if this related to this statement. **Jerome Anderson** said there are several provisions in the settlement agreement that affect this. If the sales of cigarettes drop markedly in one state in relation to the payment made to that state, then the payment would go down based on this decrease. **CHAIRMAN STORY** said he was unsure how this would be enforced, as there were some companies not part of the master settlement. **Jerome Anderson** said the companies not part of the settlement have had the opportunity to join the master agreement.

REP. WADDILL asked if considering the fact 15 states have raised their cigarette tax and have had a revenue increase while resulting in a decline in consumption if the sponsor would consider an amendment of raising the cigarette tax to \$.72 per

pack. **REP. ERICKSON** said he would consider this to be a friendly amendment.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 47.4}

REP. ERICKSON reiterated this is a tobacco tax for the Tobacco Trust. In the Canadian black market, the Canadian cigarette companies knowingly supplied the black market. He read from a document which stated the president of a Canadian company affiliated with R.J. Reynolds has pleaded guilty to being involved in illegal smuggling. He heard in testimony that taxes are a form of theft, but taxes are what we pay for civilization, which includes caring about health.

HEARING ON HB 205

Sponsor: REPRESENTATIVE CHRISTOPHER HARRIS, HD 30, Bozeman

Proponents: Dick Crofts, Commissioner of Higher Education
Dustin Stewart, Student
Sarah Cobler, Associated Students of the
University of Montana
Representative Larry Jent
Molly Neitzel, President, Associated Students of
the University of Montana
Kay Unger, University Faculty Association & MEA-
MFT
Keara Kuntz, Student Body President, Montana State
University
Kevin Deckert, MSU-Billings & MSU-Northern
Christopher Peterson, Student
Holly Lundstrom, Student Body President, MSU-
Billings
Nicole Chinie, Student
Lincoln Bauer, Student
Ryan McMahan, Political Action Director, Montana
State University
Jennifer Nydegger, Business Manager, Associated
Students of Montana State University
Lea Taddonio, Student
Bob Edwards, Student
Michelle McClenden
Brandi Weber, Student
Linda Lee, Montana Tobacco Free Kids

Opponents: Ronda Carpenter, Montana Housing Providers
 Mark Staples, Attorney
 Candace Payne, Montana Car Rental Association
 Steve Costley, Montana Car Rental Association
 Riley Johnson, Enterprise Rent-a-Car
 Robert Ward, Enterprise Rent-a-Car
 Peggy Trenk, Montana Association of Realtors
 Aidan Myhre, Montana Innkeepers Association
 Charles Brookes, Billings Area Chamber of Commerce
 Jerome Anderson, R.J. Reynolds Tobacco Company
 Mike Fellows, Montana Libertarian Party
 Steve Wade, Phillip Morris
 Amy Sullivan, Montana Tourism Coalition

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 47.4}

REP. HARRIS said this bill generates new revenue. The purposes of this new revenue are essential for Montana families, students, and education system. A new Dollars for Education account is created to spend on K-12 and university systems. This account will be funded by a small increase of the tax on tobacco products, an increase of the accommodations tax, a new realty transfer tax to target the out-of-state residents who own homes in Montana, and vehicle rental tax. These taxes are an attempt to go after tourist dollars. This is revenue over and above what is currently spent on education. There is a connection between education and the health of our economy, and there are currently very serious problems with funding education. Montana is last in teacher salary increases in the last 10 years, so teachers are moving out of the state. Since 1992 tuition adjusted for inflation has gone up approximately 20%. Montana ranked last in per student expenditures when compared with peer states. This bill raises over a two-year period only \$11.6 million, but this will go a long way toward alleviating education problems.

Proponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 56.2}

Dick Crofts, Commissioner of Higher Education, said he supports this bill reluctantly, as they have previously said revenue bills are not the universities' business, personally no one wants to pay more taxes, and tax reduction has been prominent in the last two years. The executive budget for the university systems has utility, energy, and pay plan increases to face and there is a funding gap of \$18-20 million. Tuition increases will have to be

the way this gap is closed, but tuition share will only cover utility increases, inflationary increases, operating expenses, and the cost of the pay plan. There are only three ways to increase the university system budget, which are funding it out of growth in state revenue, which has not happened as new revenue has gone to tax relief, reallocate from existing programs, or to increase taxes. Montanans do not want to have their taxes reduced at the expense of the support of the university system, because quite regularly the voters have had the opportunity to reduce their taxes, and they have strongly voted against it.

Dustin Stewart, Student, read and explained the figures from his written testimony. **EXHIBIT(tah13a10)** This bill is not targeted at the average Montanan but at out-of-state residents who come into Montana. The cost of education is too expensive to bear the cost alone.

Sarah Cobler, Associated Students of the University of Montana, read her written testimony. **EXHIBIT(tah13a09)**

Representative Larry Jent said the people in his district attend and work at Montana State University. There are also three elementary schools. This bill expresses the kind of Montana we want in the future where we support our children and education. The support in Montana for higher education has gone down while the increase in tuition has gone up. This will not be cured overnight, but this bill is a good start.

Molly Neitzel, President, Associated Students of the University of Montana, said this bill can help with student debt loads. Increased tuition costs have risen almost 500% since 1980 while Montana family incomes have only increased 110%. The average debt for Montana students is now \$17,000, which is an increase of over 30% since 1994. The people defaulting on their student loans are people who have tried to work in Montana and cannot afford to stay.

Kay Unger, Faculty Member at University of Montana, representing University Faculty Association and MEA-MFT, said student costs of acquiring higher education skills are going up and have been for 20 years. Since 1992, tuition has risen an average 9% per year. The Racicot budget did not fund education adequately, and the Martz budget funds it less adequately. Unless there is some additional revenue found for higher education, more middle income families will be pushed out of the higher education market. These additional revenue taxes are to avoid an even worse burden. In a 1998 study, the lifetime earnings of a college graduate was compared to the lifetime earnings of a high school graduate, the ratio is 1.7, which means for every dollar earned in the life of

a high school graduate a college graduate earns 1.7. By not funding higher education, we are going to generate a lesser skilled labor force.

Keara Kuntz, Student Body President, Montana State University, said this bill is an investment in our future. A 10% tuition increase means approximately \$270 additionally per year, which is approximately two weeks full-time employment at minimum wage.

Kevin Deckert, MSU-Billings & MSU-Northern, said that with Montana's economy and the wage that is earned as graduates, it is too difficult to make payments on a home and student loans.

Christopher Peterson, Student, said he is in support of this bill.

Holly Lundstrom, Student Body President, MSU-Billings, said a majority of the students at MSU-Billings are over 24 years old, so they are providing for families, working, and going to school.

Nicole Chinztle, Vice President, Associated Students of Montana State University, said she is aspiring to be a teacher and wants to help provide financial education for students through counseling and education.

Lincoln Bauer, Student, said all of his family is from Montana and would like to stay here, so he urges the support of this bill.

Ryan McMahan, Political Action Director, MSU-Billings, said he supports the bill.

Jennifer Nydegger, Business Manager, Associated Students of Montana State University, said she has seen the number of students who work just to help afford their educations. She graduated from Townsend in a class of 69. Over half of them went to college, and of that half, 3/4 of them went out of state because they received better scholarships and financial aid. This bill will be a step toward helping these students stay in Montana.

Lea Taddonio, Student, asked the committee to give a do pass recommendation on this bill.

Bob Edwards, Student, gives a do pass recommendation to this bill.

Michelle McClenden said she strongly supports this bill.

Brandi Weber, Student, said she is in strong support of this bill.

Linda Lee, Montana Campaign for Tobacco Free Kids, said she urges the committee to support the bill.

Opponents' Testimony:

Ronda Carpenter, Montana Housing Providers, said even though the sponsor's intention is to tax second homes of out-of-state wealthy people, the target he hit is actually residential property. This bill targets those Montanans who are least able to pay more taxes. Rental housing providers will pass the increase in their taxes onto their customers, who are statistically the poorest 30% of Montanans. Because this bill will raise the cost of purchasing rental property, most landlords will amortize this cost in a relatively short period of time.

Mark Staples, Attorney, is representing a number of Montana clients. He said he had to work the whole time he was going to school and that the \$17,000 debt testified about is remarkable, as his far exceeded this amount and took 12 years to pay off. Advocacy needs to be broader, and education is the responsibility of all Montanans, not just the people who rent cars or are out-of-state guests. 60% of accommodations are Montanans, and this tax lands on them, with only some on the out-of-state guests. The out-of-state people do pay when they build a home to a Montana builder, realtor, developer, and tax base. Education should have some component of public funding as well as private responsibility, but to single out subclasses is not fair and not good tax policy. Montana students do not leave the state because they did not have a good education, but these good educations allowed them to go to other states and make a good wage.

Candace Payne, Montana Car Rental Association, said they have previously introduced a bill that would have put a surcharge on their contracts in order to help members deal with the cost of licensing a rental car in Montana compared to licensing in another state. This bill did not pass, but this would have helped businesses stay open and continue to pay property and income tax. Part of this surcharge would have also gone to fund the purchase of Virginia City and Nevada City. Education is a responsibility of everyone, and it is inappropriate to do this through a targeted tax which will affect these businesses.

Steve Costley, Montana Car Rental Association, said they feel funding for education in Montana is needed, but it should be done on a broader basis shared by the citizens of Montana and not just a small select group. The definition of receipts regarding car

rentals in the bill is very broad and could cover resale of rental vehicles, manufacturer rebates, and any other income taken in, and this needs to be addressed. The cost of recovery and enforcement of the payment of these fees in the bill will be more substantial than the fiscal note has addressed.

Riley Johnson, Enterprise Rent-a-Car, said bills in the last two session regarding taxing rental cars were defeated primarily because it was bad tax policy. On Page 2, Line 6 of the fiscal note, this cost is not unique to the Department of Revenue but unique to the rental car agencies.

Robert Ward, Vice President & General Manager, Enterprise Rent-a-Car, said they operate eight offices in Montana. Education deserves a top priority, but it is unfair to target a specific industry to help fund education. Enterprise Rent-a-Car in Montana rents to Montanans three out of every four rentals. A majority of these rentals come from local Montana businesses, such as mechanic shops, body shops, and dealerships, as replacement vehicles. This tax will cause an increase for those Montana businesses and customers. Their primary goal is to provide the highest level of service to the people of Montana but keep it at a reasonable cost.

Peggy Trenk, Montana Association of Realtors, said historically they have opposed a realty transfer tax because it has an impact on affordability of housing. There are a lot of people who have second homes, such as recreational property or homes in the family for generations, who will have to sell for economic or other reasons and will have to pay this tax depriving them of the equity they built up in that property. This is imposing a new tax, and once they are on the books, they only grow.

Aidan Myhre, Montana Innkeepers Association, said the bed tax should be used for tourism-related purposes only. The tourism industry is growing and has created a number of good jobs in Montana. They support education, but this is not the best approach.

Charles Brookes, Billings Area Chamber of Commerce, said they recognize MSU-Billings is a very economic entity for the whole community of Billings; however, this is a poor approach to overall tax policy.

Jerome Anderson, R.J. Reynolds Tobacco Company, said they oppose this tax and bill on the same principles as stated in testimony for HB 58.

Mike Fellows, Montana Libertarian Party, said they oppose the tax portion of this bill as stated in the previous testimony.

Steve Wade, Phillip Morris, said they join with the other opponents that this is an inappropriate way to fund public education.

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 48.7}

REP. SCHMIDT asked what the more global way to fund education would be as stated in testimony. **Steve Wade** said they do not believe individual entities should only pay. They do not believe this bill will capture out-of-state money but will hit Montana. If he knew the answer of the best way to fund education, we would be well on our way.

REP. BALLEAT said all of the proponents were from higher education, but he is interpreting the bill to say less than 2% of the tax raised would go to higher education and wondered if that was correct. **REP. HARRIS** said there is no division lines between where the money raised will go, whether it is K-12 or higher education. It is up to the legislature to decide how to allocate from this Dollars for Education fund. **REP. BALLEAT** asked if 20% of the taxes raised would go to the fund. **REP. HARRIS** said no. The bill is stating a 20% increase in tax goes entirely to the Dollars for Education fund. **REP. BALLEAT** asked how much money this would generate for higher education. **REP. HARRIS** said the fiscal note indicates over a two-year period it is \$11.6 million. In years three and four, it would be around \$8 million. **REP. BALLEAT** asked if in the bill it dedicates a certain amount to higher education and a certain amount to K-12, and if not, how the figure of \$11.6 million was determined. **REP. HARRIS** said he said the \$11.6 million is the fiscal note analysis. The reason there is no dividing line between higher education and K-12 is it should be determined by the legislature as to what the needs are, such as teacher salaries first and then possibly tuition aid. **REP. BALLEAT** asked if the \$11.6 million was for higher education or for both higher education and K-12. **REP. HARRIS** said it is for both higher education and K-12. All of the money goes into the Dollars for Education fund, which the legislature can choose what the priorities should be. **REP. BALLEAT** asked that if a second residence was sold without a profit the 1% transfer tax would still be applicable. **REP. HARRIS** said that was correct. **REP. BALLEAT** asked what the interpretation was of gross receipts on rental cars and if it included sales of those cars. **REP. HARRIS** said that when drafting this bill, it was not intended to

go after the car sales, and he would not object to an amendment to clarify that. The original idea was that every time a rental car is rented, they would pay 5% on that amount. **REP. BALYEAT** asked if it is the intent to tax the gross receipts of car rentals before any business expenses or other expenses are subtracted off. **REP. HARRIS** replied it was.

REP. ERICKSON asked if there was any information available on how many other states have realty transfer taxes or tax on rental cars. **REP. HARRIS** said he has asked the research branch to get this kind of information, but it has not yet arrived. From personal experience, there are realty transfer taxes, much higher bed taxes, and car rental taxes.

REP. LASLOVICH asked if Steve Costley would be here as an opponent if this bill did not affect rental car taxes. **Steve Costley** replied that he would.

REP. SCHMIDT asked if information was available showing realty taxes in other states. **Roger Halver, Montana Realtors Association**, said they could get this information in the form of charts or graphs. **REP. SCHMIDT** asked what the rental car fees were in other states. **Steve Costley** said there are approximately 32 states taxing rental cars in form or another. This ranges from funding infrastructure for interstate highways to the Olympics to building ballparks. **REP. SCHMIDT** asked if there was a chart on this information. **Steve Costley** said this is not readily available but he could get this information.

REP. DEVLIN asked a question regarding university budgeting. Since the commissioner was absent, this question was postponed.

REP. BALYEAT asked if there was something in this bill that gave higher education a guarantee for more money since this would ultimately be up to the legislature. **Dustin Stewart** replied he has great faith in the legislature to decide where this money should go.

CHAIRMAN STORY asked if OPI has looked at the bill and given any feedback. **REP. HARRIS** said OPI has not seen it but thinks they will have an opinion. **Kay Unger** said there is no division of this fund between K-12 and higher education, but higher education is dependant on successful interaction with K-12. MEA-MFT supports this. **CHAIRMAN STORY** asked if the sponsor was assuming this money could possibly be used to replace general fund money and not actually cause an increase in spending on education. **REP. HARRIS** said he meant to convey that this new revenue should be over and above what is currently budgeted. It would be an act

of futility to raise these taxes just to have it replace current funding.

REP. DEVLIN said this bill would increase travel expenditures regarding rental cars and wondered if a figure was available on what the university system pays for travel expenses. **Dick Crofts** said he did not know but could try to find this out. **CHAIRMAN STORY** said there is some language in the body of the bill regarding the way the bed tax already works.

REP. BALYEAT asked if there is anything in this bill that guarantees higher education more than the 2% stated. **REP. HARRIS** said the 2% for higher education in the bill is existing funding, so the revenue for this will not be affected. **REP. BALYEAT** asked if of the new money generated it will still be just 2%. **CHAIRMAN STORY** said that under the old system 2.5% of the money was for the tourism study at the University of Montana. Since the revenue is rising, they are decreasing this to 2% so it raises roughly the same amount of money. **REP. BALYEAT** asked if there is anything in the bill that guarantees any additional money to higher education other than at the discretion of the legislature. **Dick Crofts** said he did not think there was. This is creating a new fund that is left open for a legislative decision about how that money would be proportioned. People in the education community would be able to make proposals to the legislature. The bill could be easily amended to appropriate half of the money to K-12 and half to the university system.

REP. FUCHS asked if the commissioner would vote to fund education this way or vote to fund it through general appropriation. **Dick Crofts** said his opinion is that it is preferable to the state to take care of education responsibilities through regular appropriations from the general fund. He does not know of another university system that relies on a separate funding source or that has to secure its funding through a public vote. It is not working going to the general fund, so that is why he is supporting this bill even though it is not believed to be good tax policy.

REP. BALES asked if this funding is additional to the K-12 funding, which is a base plus an ANB, how would the supplemental money be distributed to the different school districts in a fair and equitable manner. **REP. HARRIS** said this should be left to the legislature to make the choices of priorities and methods of distribution, but he is willing to work on ways this could be done to make it fair and equitable.

CHAIRMAN STORY said a lot of people testified that the state has decreased its contributions to the university system and asked for

clarification on this. **Dick Crofts** said the answer depends on where you measure from. From 1992 to 2001, there has been a \$6 million decline if you measure it in terms of state support per student. If you start from 1991, the university appropriate has increased for the decade by about \$6 million, which is about a .6% increase per year for the decade. If you start at 1995, the university budget has increased by about \$11 million, which is 9% over that time or 1.5% per year. **CHAIRMAN STORY** asked if it was agreed that in 1992 there was a problem with the state budget and a lot of people took a cut that year. **Dick Crofts** said this is correct and the numbers fell in 1993-1995. Other states went through similar declines economically at this time, but when the economy turned around, there was an effort to catch up the dollars that had been lost to education. In Montana, we are still not caught up. **CHAIRMAN STORY** said the testimony talked about the state's decrease in support for education and asked if it really related to the issue of costs of post secondary education being more than the state's increased contributions. **Dick Crofts** said this is correct. Inflation and increased expenses in the university system has far exceeded the amount of increase given by the state, and therefore, they have been falling behind and the burden is being shifted to the students. **CHAIRMAN STORY** asked how much of that increased cost is under the control of the Board of Regents. **Dick Crofts** said some of it is under the control of the Board of Regents, as they are responsible for approving the operation budgets of the universities. They have the responsibility of setting tuition rates and expenditures. Establishing these at lower rates would have negative impact on student access to the university system and quality programs.

Closing by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 22.3}

REP. HARRIS said this bill is an investment in Montana's future, which is represented by the students here. He disagrees with the assumptions of tax burdens stated by the opponents. He would be glad to work with the committee on any amendments.

ADJOURNMENT

Adjournment: 11:44 A.M.

REP. BOB STORY, Chairman

RHONDA VAN METER, Secretary

BS/RV

EXHIBIT (tah13aad)